

Agenda Item No. 3.1
For Agenda of June 26, 2007



Tigard City Council Meeting Minutes

Date: April 24, 2007
Time: 6:32 pm.
Place: Tigard City Hall, 13125 SW Hall Boulevard
Tigard, Oregon
Attending: Mayor Craig Dirksen Presiding
Councilor Gretchen Buehner
Councilor Sally Harding
Councilor Sydney Sherwood
Councilor Tom Woodruff

Agenda Item	Discussion & Comments	Action Items (follow up)
Executive Session	<p>The Tigard City Council went into Executive Session at 6:32 p.m. to discuss labor negotiations under ORS 192.660(2)(d).</p> <p>Executive Session concluded at 6:50 p.m.</p>	
Study Session – Administrative Items	<ul style="list-style-type: none"> ▪ Tonight's agenda was revised as noted on the first page of the agenda. Copies were distributed to the City Council. ▪ There was brief discussion on the Red Hat Society proclamation, which the Mayor will issue during the business meeting. ▪ D.A.R.E. Graduation, will be on Thursday, April 26, at Templeton Elementary School. Councilor Sherwood will attend. ▪ City Council discussed the Council vacancy that will occur due to Councilor Harding's decision to resign as City Councilor effective today (after the City Council meeting). Councilor Harding and Councilor Sherwood have had conversations with former Councilor Nick Wilson. Mr. Wilson said he would be willing to consider serving on the City Council again if the City Council chose to appoint him. Councilor Buehner indicated concern about process for making the appointment advising that there may be a perception issue from the community if Mr. Wilson were appointed without soliciting names from others. City Attorney Ramis advised that 	<p>City Council decided to continue this discussion at its May 8, 2007, City Council meeting.</p>

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	<p>the Charter gives wide discretion to the City Council with regard to the appointment process. City Council members discussed their options. Some City Council members had been contacted by individuals who are interested in an appointment as a City Councilor. Councilor Sherwood commented that the advantage of appointing Mr. Wilson would be his familiarity with several large City projects that are underway including the Comprehensive Plan Update, 99W improvements, and the Downtown development.</p> <ul style="list-style-type: none"> ▪ An e-mail communication from Brian Wegener regarding a Measure 37 claim (E&V Development Property) was distributed to the City Council. ▪ The Tigard Balloon Festival will be held June 15-17, 2007. City Manager Prosser requested City Council members consider staffing the City booth for a few hours during the event. Councilor Sherwood advised she would be unable to attend this year. ▪ Measure 37 hearing proceedings were discussed. There was a question whether wetland regulations were applicable for Measure 37 claims. City Attorney Ramis said there is some question about whether wetland regulations would apply when considering a Measure 37 claim. Mayor Dirksen said he understood that if an approval is granted, it does not mean the Clean Water Services or other agencies' regulations would automatically be waived. Councilor Buehner noted that this is the type of issue that should be brought to the attention to citizens when Measure 37 claims are presented. 	
Study Session (continued) – Tigard Festival of Balloons and the Use of Cook Park	Tigard Festival of Balloons organizer, Dave Nicoli, presented his argument whereby he was proposing to close Cook Park to the public for the exclusive use of the Balloon Festival. He noted his work and financial support over the years to make this event “stand on its own.” He advised he donates about \$50,000 a year to the event. Mr. Nicoli reviewed the activities being planned and efforts to provide more Festival activities during the day. To reach the goal of self-sufficiency, more people need to attend. He	After discussion, there was agreement among the Mayor and City Council members to close the park for the exclusive use of the Balloon Festival this year to see how the community responds. The closure will be evaluated before allowing closure to occur again next year.

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	<p>noted the number of non-profit organizations in the community that benefit from participation in the festival through fundraising activities.</p> <p>Public Works Director Koellermeier advised staff has reviewed and supports Mr. Nicoli's request.</p> <p>A pass can be purchased for \$5, which will be good for the entire weekend.</p> <p>Other services and activities were discussed including availability of handicapped parking, activities for all ages, and future plans for the festival.</p> <p>Study Session concluded at 7:27 p.m.</p>	
Business Meeting	<p>1.1 Mayor Dirksen called the City Council and the Local Contract Review Board to Order at 7:34 p.m.</p> <p>1.2 Council Present: Mayor Dirksen, Councilors Buehner, Harding, Sherwood, and Woodruff.</p> <p>1.3 Pledge of Allegiance</p> <p>1.4 Council Communications & Liaison Reports</p> <p>1.5 Call to Council and Staff for Non-Agenda Items</p> <p>Councilor Harding announced her resignation from the City Council, which would be effective at the conclusion of this meeting. She spoke of her service on the City Council and how difficult it was to make this decision. Councilor Harding will be moving out of state. Mayor Dirksen said that Councilor Harding would be missed.</p> <p>Mayor Dirksen presented Councilor Harding with a certificate of appreciation, a gift, and farewell cards signed by the City Council and members of staff.</p> <p>City Attorney Ramis commented on the procedural aspects available to the City Council as they consider how to fill the vacancy created upon Councilor Harding's departure. There is a wide array of options</p>	

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	<p>available to the City Council.</p> <p>Mayor Dirksen commented on past methods used by previous City Councils when a vacancy was filled. He advised the City Council would discuss this matter again at its May 8, 2007, City Council meeting.</p>											
2. Proclamations	<p>Mayor Dirksen issued the following proclamations:</p> <ul style="list-style-type: none">▪ Be Kind to Animals Week – May 6-12, 2007.▪ Red Hat Society Day – April 25, 2007. Ms. Jill Davis from a local Red Hat Society organization, the Crimson Crones, spoke about the purpose of this Society, which was founded in 1998. <p>Copies of the proclamations are on file in the City Recorder’s office.</p>											
3. Citizen Communication	<p>Tigard Chamber of Commerce President Ralph Hughes presented information on upcoming Chamber events.</p>											
4. Consent Agenda	<p>4.1 Approve Council Minutes for March 13 and 20, 2007.</p> <p>4.2 Approve Budget Amendment #14 to the FY 2006-07 Budget to Increase Appropriations in the Mayor and Council Budget Within the Policy and Administration Program for One-Time Funding for the Vision Action Network’s Sustainability Feasibility Study – Resolution No. 07-25</p> <p>4.3 Approve Budget Amendment #15 to the FY 2006-07 Budget to Increase Appropriations to the Mayor and Council Budget with the in Policy and Administration Program for One-Time Funding to Tigard Safety Town – Resolution No. 07-26</p>	<p>Motion by Councilor Sherwood, seconded by Councilor Harding, to approve the Consent Agenda.</p> <p>The motion was approved by a unanimous vote of Council present.</p> <table><tr><td>Mayor Dirksen</td><td>Yes</td></tr><tr><td>Councilor Buehner</td><td>Yes</td></tr><tr><td>Councilor Harding</td><td>Yes</td></tr><tr><td>Councilor Sherwood</td><td>Yes</td></tr><tr><td>Councilor Woodruff</td><td>Yes</td></tr></table>	Mayor Dirksen	Yes	Councilor Buehner	Yes	Councilor Harding	Yes	Councilor Sherwood	Yes	Councilor Woodruff	Yes
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5. Annual Volunteer Program Highlights Presentation	<p>City Administration Volunteer Coordinator Bob Roth introduced Library Volunteer Coordinator Trish Stormont and Public Works Surface Water Quality/Volunteer Coordinator Carla Staedter. Staff presented information to the City Council and community about recent accomplishments, ongoing activities and anticipated volunteer trends. A</p>											

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	summary of the information presented is on file in the City Recorder's office, including copies of the PowerPoint presentation slides: <i>Giving a Face to Tigard's 1200 Volunteers</i> and <i>City of Tigard Volunteer Program By the Numbers</i> .											
6. Legislative Public Hearing – Comprehensive Plan Amendment (CPA) 2006-00002 to Add New Downtown Goals, Policies, and Action Measures	<p>Mayor Dirksen opened the public hearing.</p> <p>City Attorney Ramis reviewed the process for this legislative public hearing.</p> <p>Associate Planner Farrelly presented the staff report; a summary is on file in the City Recorder's office.</p> <p>The issue before the City Council whether to approve the Planning Commission's recommendation to adopt the Comprehensive Plan Amendment (CPA 2006-00002) to add new Goals, Policies, and Action Measures applicable to the Downtown Urban Renewal District to enable implementation of the Tigard Downtown Improvement Plan.</p> <p>Key points of the staff report included:</p> <ul style="list-style-type: none">▪ The current Comprehensive Plan language is inadequate.▪ Section 11.1 is outdated. The amendment will reflect Downtown's new multiple-functional role for housing, employment and retail.▪ Economy Policy 5.5 recommends that downtown residential development be allowed above the first floor; this Comprehensive Plan amendment will allow stand alone housing in the downtown.▪ The relationship between the Tigard Downtown Improvement Plan (TDIP) and this amendment is that the TDIP will be the resource for the Comprehensive Plan amendment and is identical to the TDIP's goal to create a vibrant, active urban village in the community that is pedestrian oriented, accessible by many modes of transportation, recognizes and uses natural resources as an asset, and ensures a combination of resources	<p>Motion by Councilor Harding, seconded by Councilor Sherwood, to adopt Ordinance No. 07-07.</p> <p>The motion was approved by a unanimous vote of Council present.</p> <table><tr><td>Mayor Dirksen</td><td>Yes</td></tr><tr><td>Councilor Buehner</td><td>Yes</td></tr><tr><td>Councilor Harding</td><td>Yes</td></tr><tr><td>Councilor Sherwood</td><td>Yes</td></tr><tr><td>Councilor Woodruff</td><td>Yes</td></tr></table>	Mayor Dirksen	Yes	Councilor Buehner	Yes	Councilor Harding	Yes	Councilor Sherwood	Yes	Councilor Woodruff	Yes
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	<p>that enables people to live, work, play, and shop in an environment that is uniquely Tigard.</p> <ul style="list-style-type: none"> ▪ The policies and action measures are found in three categories. Associate Planner Farrelly summarized the policies and action measures to facilitate an urban village. ▪ This CPA will apply to the urban renewal district area, a larger area than the central business district. ▪ Applicable standards and policies of the state (DLCD), Metro, and City of Tigard have been satisfied. ▪ A public hearing on this proposed amendment was held before the Planning Commission. After one revision, included in the document before the City Council, the Planning Commission recommended approval of the amendment by a unanimous vote. A copy of the March 19, 2007, meeting minutes of the Planning Commission summarizing their discussion on the proposed amendment was submitted as part of the staff report for this hearing before the City Council. ▪ Amendments to the Development Code will be prepared for Council consideration if this comprehensive plan amendment is approved. <p>Mayor Dirksen asked if the City Council if there were questions of staff. There were none at this time.</p> <p>Public testimony.</p> <p>Sue Beilke signed in as an opponent. Ms. Beilke said she supports the proposal overall; however, she did not think some items had been addressed. She referred to Policy 11.2.1 and said she did not see where natural resources values and functions were defined. Associate Planner Farrelly responded that the amendment is a roadmap to guide future changes and to provide a legislative foundation; more details would be developed when the Development Code amendments are prepared relating to the urban renewal district area.</p> <p>City Attorney Ramis noted that the amendment</p>	

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	<p>represents general policy language and that the City Council could develop other regulations using this language as a framework.</p> <p>Councilor Buehner noted this amendment had been discussed during recent City Center Advisory Commission meetings. One of the primary concerns of the CCAC was that guidelines be established as quickly as possible so implementation of the downtown improvement plan could proceed recognizing there is a longer-term project occurring with the update of the City's overall comprehensive plan.</p> <p>Councilor Harding added that part of the reason for addressing this section of the comprehensive plan was to make it possible for development to occur in the downtown. She also noted that the strict City of Tigard Goal 5 regulations now in place would apply. She said the Downtown Improvement Plan should be allowed to move forward but cautioned that development should be monitored closely.</p> <p>Ms. Beilke suggested that it be stated that existing regulations are applicable. Mayor Dirksen reiterated that the purpose of considering the proposed amendment now was to keep downtown projects moving forward while decisions are being made on the Comprehensive Plan amendments overall. The amendment now before the City Council will allow City officials to determine what changes are needed to the Development Code to implement the TDIP. Councilor Sherwood encouraged Ms. Beilke to remain involved as changes are proposed for the Development Code.</p> <p>Additional testimony: Associate Planner Farrelly noted, for the record, an e-mail dated April 19, 2007, was received from Mr. John Frewing. This e-mail was distributed to the City Council and is on file in the City Recorder's office. Mr. Frewing advised of his concerns in that the "...proposal departs grossly from common sense and prior practice of this City Council wherein changes are evaluated against all of the State Land Use Goals and judged to be relevant or not relevant."</p>	

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	<p>Mayor Dirksen asked if the City Council had questions or if staff had rebuttal comments to testimony received. Associate Planner Farrelly advised that natural resources regulations would be taken into account for future development.</p> <p>Staff recommended approval of the proposed comprehensive plan amendment.</p> <p>Council comments:</p> <p>Councilor Buehner referred to the CCAC's position that it is important to get this amendment through as soon as possible.</p> <p>Councilor Woodruff noted this matter has been under review and supported the amendment as the next step to move ahead.</p> <p>Councilor Sherwood agreed that the proposed Comprehensive Plan amendment is "just the start."</p> <p>Councilor Harding indicated she also supports moving forward with this amendment; in fact, the process followed up to this point has potential for national recognition.</p> <p>Mayor Dirksen also agreed that this is a step in the process to begin work on the downtown.</p> <p>Mayor Dirksen closed the public hearing.</p> <p>City Council considered Ordinance No. 07-07:</p> <p>AN ORDINANCE ADOPTING COMPREHENSIVE PLAN AMENDMENT CPA 2006-00002 TO REPLACE THE DOWNTOWN CHAPTER OF VOLUME II OF THE COMPREHENSIVE PLAN AND ADD NEW GOALS, POLICIES AND ACTION MEASURES AND AMEND COMPREHENSIVE PLAN POLICY 5.5</p>	

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<p>7. Measure 37 Claim Hearing (Quasi-Judicial) – E & V Development Company (M372006- 00007)</p>	<p>Mayor Dirksen opened the public hearing.</p> <p>City Attorney Ramis reviewed the procedures for this quasi-judicial hearing.</p> <p>City Council Declarations: Councilor Buehner advised she represents two property owners whose land abuts this property.</p> <p>Associate Planner Caines presented the staff report. E&V development Company seeks a waiver of current land use regulations that restrict development within wetlands on a .41 acre site located on Greenburg Road, south of Highway 217. The Council Agenda Item Summary for this matter is on file in the City Recorder's office.</p> <p>Staff recommended the proposed ordinance be adopted, which would grant a Ballot Measure 37 waiver of the Tigard Development Code wetland regulations, to run with the person and not the land. A copy of the proposed ordinance is on file in the City Recorder's office.</p> <p>Mayor Dirksen referred to a map and requested clarification of what areas are wetlands. Associate Planner Caines identified a area around Ash Creek, which is a significant wetland. Another area is a buffer area around the wetland which is regulated by Clean Water Services. Associate Planner Caines confirmed that the buffer area could be considered developable property if it was not located adjacent to a wetland.</p> <p>Public Testimony:</p> <p>Applicant Eugene Davis noted he and his wife, Vivian, purchased this land in 1969. He reviewed the key points of his request:</p> <ul style="list-style-type: none"> ▪ They would like to develop this property. ▪ He said that since he has filled out the Measure 37 application, he has hired an architect. 	<p>Motion by Councilor Buehner to adopt Ordinance No. 07-08 to approve the waiver. There was no second; the motion was not considered by the City Council</p> <p>The Mayor asked if there was any support for a continuance of this item.</p> <p>Councilor Woodruff said he would be interested in hearing what Clean Water Services would have to say about this application. He would be open to reviewing this later with input from CWS. City Attorney Ramis said the only way to get more information for this process would be to continue the matter, with the concurrence of the applicant and get a waiver from the 180-day time limitation from the applicant, and then have the staff work further on the process.</p> <p>Discussion followed, including advice by City Attorney Ramis that the Council could make a motion to deny the claim, then staff would return with an ordinance reflecting the Council's decision for the Council to consider.</p> <p>Motion by Councilor Harding, seconded by Councilor Sherwood, to deny the claim.</p>

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	<div>▪ They would like to build up to a six-plex and have the same privileges they had when they bought the property.</div> <div>He advised his architect was available to answer any technical questions.</div> <div>Mayor Dirksen asked City Council if there were any questions.</div> <div>Councilor Buehner asked if Mr. Davis had done an analysis of the FEMA 100-year floodplain. Mr. Davis said yes. She asked if any of this property was within the 100 year flood plain. Mr. Davis confirmed some of the property was within this flood plain and acknowledged that they would need to deal with that according with the FEMA plans. In 1979 Mr. Davis received a permit from FEMA; he said he has those drawings when the Ash Creek Condominiums were built (60 units). He noted this one lot was not built, which they planned to develop later. The 100-year floodplain was delineated for this lot. Councilor Buehner asked Mr. Davis if he was aware that this floodplain was recently amended. Mr. Davis said, no. But, he said since the property was developed in 1979 and there have been two “more than” 100-year floods and none of the condominiums “got wet.” The 100-year floodplain, as FEMA had it delineated originally, said Mr. Davis, is the true 100-year floodplain. In response to a question from Councilor Buehner, Mr. Davis said he had not applied for a permit from Clean Water Services. He said he did what was necessary to file the Measure 37 claim. Mr. Davis said he believed he had filed a claim with the State.</div> <div>In response to a question from Councilor Woodruff, Mr. Davis confirmed he bought a large parcel of land a number of years ago, developed part of it and saved a parcel, which he planned to build on later. The reason he did not do it initially, was because they could not afford it.</div> <div>Councilor Woodruff asked Mr. Davis what his plans had been prior to the arrival of Measure 37. Mr. Davis said he always thought somehow this could</div>	<div>The motion was approved by a majority vote of Council present.</div> <div>Mayor Dirksen Yes Councilor Buehner No Councilor Harding Yes Councilor Sherwood Yes Councilor Woodruff Yes</div> <div>The staff will return with an ordinance for the City Council’s consideration on May 22, 2007 on this matter.</div>

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	<p>be developed. He noted they tried to develop earlier, but there were too many obstacles because of the wetland issues. He said, "...everyone loves to look at water that belongs to someone else."</p> <p>Additional public testimony:</p> <p>Robert Ruedy testified in favor as a proponent of the Measure 37 claimants to retain all of their land use options available to them at the time of original purchase or moment of initial ownership. The will of the majority of voters have created this property rights law for its most loyal long term citizens and taxpayers and he stated he wished to reflect his full support of its implementation. He suggested that opponents to the Measure 37 claim buy the property at the Measure 37 protected prices and enjoy the property and all it has to offer.</p> <p>Paul Sedoric, of Salem, Oregon testified as the owners' architect. He advised he has only had time to work on the conceptual stage with regard to the best development for this property. He created some drawings and left a copy as an exhibit with the City Recorder. At the time of application, Mr. Davis proposed to do some type of residential development. It looks as if there would be no problem to place six units (condominiums). He described an L-shaped, three-story building. The market would be for "empty nesters" or people who only want a single-level condominium. He noted there would be underground (below grade parking). In reviewing an aerial photograph, there would be little impact to the wetland habitat. There are no plans to place the building right up against the creek. The waiver of requirements, he explained, was really a request for a waiver of the buffer requirements. He noted he had a site plan and a projected floor plan. Because of the location, adjacent to Greenberg Road, they would be looking at a minimum amount of windows on that side of the structure. The building would offer "fantastic views" of the wetlands.</p> <p>City Attorney Ramis asked if there has ever been a wetland delineation done for the property. Mr.</p>	

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	<p>Sedoric said “not to my knowledge.” Mr. Sedoric said the map used by the City was probably created for the City by a professional who was paid to develop a general wetland map. City Attorney Ramis asked if the applicant would be developing a wetland analysis for the property? Mr. Sedoric answered that “I think we will have to because even though the procedure is being waived by the City...if approved tonight...we still have Clean Water Services...DSL...and Corps of Army Engineers,” which all have regulations. There would be simultaneous action and review by these other agencies. Mr. Sedoric said it would go back to when the authority was gained over the wetlands. He said that he thought “we might beat DSL out on that and I am pretty sure we beat Clean Water Services out on that date, but I doubt if we beat out the Corps of Army Engineers. He said typically, “they watch out for each other.” He said he was sure the Corps of Army Engineers would look at it more thoroughly if they were aware of regulations in place through Clean Water Services. He said they expect they will have to deal with the various agencies and comply with standards in effect in 1967.</p> <p>Opponents:</p> <p>Brian Wegener testified representing Tualatin Riverkeepers. Mr. Wegener had submitted written testimony to the City Council and Council members confirmed that they had a copy. Measure 37 and Tigard’s rules about Measure 37 say that claims may be denied if the regulation protects public health and safety or if the regulation is required by federal law. Tigard’s Development Code (Sensitive Lands) makes the purpose of the sensitive lands regulations clear: Sensitive lands areas are designated to protect public health, safety, and welfare of the community through regulation of these sensitive lands. The public health and safety conditions for which the Council could deny this waiver exists in the City Code. Further, 18.775 states that the regulations of this Chapter are intended to protect the beneficial uses of water in the Tualatin River Basin in accordance with Clean Water Services Design and Construction Standards adopted in February 2000.</p>	

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	<p>He said this language comes from the Federal Clean Water Act. Clean Water Services Design and Construction Standards are conditions of their municipal storm sewer permit issued by the Department of Environmental Quality. Since the City of Tigard operates part of the municipal storm sewer system, Clean Water Services must have the authority to regulate, which is done through an intergovernmental agreement (IGA). Mr. Wegener said the IGA says the City must uphold the Design and Construction Standards; these cannot be waived or it would be a violation of the Clean Water Act subject to penalties. The IGA states that if these penalties are imposed, the City will hold Clean Water Services harmless.</p> <p>Mr. Wegener noted the \$398,150 claim, but it is not supported by a market study or appraisal. Further, there is no wetland delineation, no platting of where the land is. He questioned how the applicant could determine the amount of damage. Mr. Wegener said he thought the Council's time was more valuable than to be spent evaluating incomplete applications. For that reason alone, he said the City's rules say that incomplete applications may be denied. He said the strongest argument against approval of this claims lies with the need to comply with the regulations for a storm water permit. Next, he said the City's Development Code says that the purpose of the Code is to protect the public's health and safety.</p> <p>Mr. Wegener and Councilor Buehner responded, "yes" to a question from Councilor Sherwood regarding regulation language that strictly states denied if public health and safety is affected.</p> <p>Mayor Dirksen called for discussion on this request. He thanked Mr. Wegener for bringing up these issues earlier and noted that the City Attorney has reviewed Mr. Wegener's information.</p> <p>City Attorney Ramis said that another jurisdiction is litigating a very similar case where the city has denied a Measure 37 claim based on the theories Mr. Wegener is offering. On the question of whether or</p>	

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	<p>not the claim can be denied on the theory the regulation protects health and safety, the issue is this: Is it sufficient that the ordinance simply says it's a health and safety issue, as many ordinances do. Or, is it necessary to show that because of circumstances for this property there are public health and safety issues. This is ultimately what will be litigated. City Attorney Ramis said that, while this is the correct issue, he could not say that as a matter of law, yet, that the City would be compelled to deny the application. He said he thought it was a matter of judgment by the City Council until there is further guidance from the Court.</p> <p>City Attorney Ramis said that on the question of whether the City Council could deny based upon federal law requirements, at this point it is attenuated insofar as it is a requirement and the City has agreed through an agreement with Clean Water Services to have regulations. City Attorney Ramis said it was not clear to him that the IGA requires the City to deny Measure 37 claims. The Court may say so, but at this point there is no case law. City Attorney Ramis said he would be comfortable defending a Council decision either way. He said he did not think the staff's recommendation was necessarily the incorrect one. He suspected that if the Council concurred with the staff's recommendation, the forum for resolution of this dispute shifts to the State. The applicant clearly recognizes that they need to go to other jurisdictions to get waivers. City Attorney Ramis said he thought it had become clear tonight that would include Clean Water Services; they have already filed with the state, and without doubt, the Corps of Engineers would have an interest in this property. City of Tigard is not the only jurisdiction that "will have a hand in this."</p> <p>Mr. Wegener said the Corps of Engineers and the Department of State Lands regulate the wetlands. He said the City's storm water permit, which is part of the Design and Construction Standards, includes those buffers; however, they are also in the Community Development Code, 18.775.090.</p>	

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	<p>Dan Tanner, noted his concerns about this development with the possibility of six units “crammed on this tiny...piece of property.” He said he and others have concerns that this development would change the appearance of their entryway. Now, they have a “nice, open entry...when you have this totally different building up front, it will change it dramatically.” He asked about impacts to parking lot resources. Mr. Tanner said he did not see anything in the way of a plan. He said he bought his property with a nice, open lot and he realized later on that it was not part of Ash Creek Park, but it was owned by the Davis’s. He said he hoped there was some concern for the owners who have bought land “with things being as they are.”</p> <p>Sue Beilke submitted written testimony for the record, which is on file in the City Recorder’s office. She agreed with Mr. Wegener’s comments. She reiterated that the applicant seeks to avoid wetland regulations, “...but we citizens of Tigard rely on City regulations” to help protect our streams, our corridors, buffers, water quality, flooding – the health and safety of all the citizens. She said she does not the City to provide a waiver and pass this onto a higher body, such as the state, to rule on this. She asked the Council to rule on this matter tonight as it is really important. Ms. Beilke said Measure 37 was passed by the majority of voters; however, she said she thought there was a general consensus that this measure would allow property owners to develop in cases where they had been denied that ability. She said this landowner does have the ability to develop. She asked that the waiver be denied so the existing streams and buffers are protected. She said she was referring to 18.775, of the Tigard Development Code, which addresses Ash Creek and the wetlands. The Code language also provides for a 50-foot vegetative corridor. The purpose of the Tigard Development Code is to maintain the integrity of the rivers, streams and creeks in Tigard by minimizing erosion, promoting bank stability, maintaining and enhancing water quality. She said she thinks that these would all be things that the owner wants to do so no one would move in and be flooded or have the bank fall apart as has been</p>	

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	<p>experienced on coastal properties and some areas in the state of Washington. There is little of this sensitive land in Tigard and urged the Council consider how development would affect everyone. She noted the property owner would still be able to develop the property, although "it would be a little bit less."</p> <p>Applicant Rebuttal:</p> <p>Mr. Davis said that well over a million voters in Oregon voted for Measure 37. Not even .8 of 1 percent of the land in Oregon is impacted by Measure 37. He said this property is only .41 acres and a good deal of this in the 100-year flood plain that is not available to develop. Mr. Davis said he does have a 100-year flood plain delineation. Everyone, including him, wants open land from someone else's property. The fact is, "this is our lot and we have a right to build on it, I believe."</p> <p>Mr. Sedoric said that they would be regulated as far as water quality and storm water runoff. All of these are important issues and they have an equal amount of concern as do the citizens for the water quality of Ash Creek. The development would be designed to meet standards by Clean Water Services and meets runoff requirements. There are opportunities for a more urban development.</p> <p>Councilor Sherwood asked if it is the applicant's plan to meet all of Clean Water Services regulations, then why is the Council being asked to waive the City's regulations? Mr. Sedoric qualified that he only recently became involved in this project, but it appears that because of regulations, there is no buildable site left in the area. He said most codes allow that at least one unit be allowed on each site and, therefore, there is a substantial amount of financial loss (one unit vs. six). He said staff might be able to answer questions about regulations better than he can.</p> <p>Councilor Sherwood asked how many units are allowed to be built on the site. Planning Manager Bewersdorff said staff does not know at this time;</p>	

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	<p>the project would go through the site development review process. Density calculations must be reviewed and, based on what the Code allows, the applicant will be allowed to build a certain number of units. He said the staff's recommendation for the waiver would avoid potential litigation and associated costs of litigation. CWS, Corps of Engineers, and DSL requirements would "come into play." These are very similar requirements adopted in 1984. All of the City's subdivisions and developments were required to go through those review processes if wetlands were involved.</p> <p>Planning Manager Bewersdorff confirmed Mayor Dirksen's statement that if the City waives its regulations, there is no loss in regulations because of other agencies' regulations that are in place.</p> <p>Councilor Woodruff asked what is buildable or developable on this property without any kind of waiver. Planning Manager Bewersdorff said that until there is a site plan and wetland delineation, staff will not know the answer to this question. Planning Manager Bewersdorff said based on the area there are ways to develop parts of the property.</p> <p>Councilor Buehner said it was her understanding that the City adopted CWS standards with regard to wetlands and buffers. Planning Manager Bewersdorff confirmed this understanding and added that there are additional regulations that apply through the Safe Harbor Act (state regulations). Councilor Buehner said that if we waive our code, then we are not waiving anything that they would not need to address because of other jurisdictions' regulations. Planning Manager Bewersdorff said that is correct.</p> <p>City Attorney Ramis asked staff if the site is developed, does the applicant need to go to DEQ to get a discharge permit. Planning Manager Bewersdorff said such a permit would be needed depending on the number of units and parking lot requirements. They will also need to deal with storm drainage, and sewer and water system requirements along with evidence that they meet</p>	

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	<p>traffic requirements.</p> <p>Mayor Dirksen said it was his understanding there was an option available to the City to reach an agreement with the applicant to continue this process until they do development review and submit plans. Then, the City Council could evaluate what Measure 37 claim may exist or attempt to mitigate. Perhaps the best thing to do is to continue this hearing until additional information is submitted by the applicant. City Attorney Ramis confirmed that the City Council does have this option if the applicant agrees to continue the proceeding to allow further review of the project. The City could also enter into a settlement agreement if it wished to do so. Mayor Dirksen asked if this was something the applicant would consider.</p> <p>Mr. Davis said he was here to do “whatever you guys tell me.” He said he would like for this to be as simple as possible to avoid additional meetings. Mayor Dirksen said he was fairly certain staff would recommend the course of action to avoid litigation and complications. But, as a Council they need to look at what is the fairest and best. Planning Manager Bewersdorff said staff has some concern as they were reacting to the claim that was submitted. When this goes through the development review process, there could be a potential for another claim.</p> <p>In response to a question from Councilor Woodruff, Mayor Dirksen advised he is suggesting that the Council continue this claim and ask the applicant to move forward with a development application so there would be information to review and determine what the impacts would be and determine if there is possibility for a settlement agreement, which might include a partial waiver as opposed to a “blanket waiver.”</p> <p>Councilor Sherwood said she agrees with the staff recommendation. She would prefer not “dragging this out for months” and then have more claims filed.</p> <p>Councilor Harding noted her dismay at what this is</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>costing the City even for this review. She said she was not anti-Measure 37 as it has its merits, but she said there was a need to consider what was the intent of the voters. She said she was disappointed in this claim noting the property has been there for 40 years and the applicant has waited until the very end to make a claim. She referred to the circumstance where regulations imposed by the Army Corps of Engineers made it too costly for the City to make improvements to Greenburg Road. With regard to the applicant's testimony concerning the desirability of property along waterways, she noted that Fanno Creek and Tualatin River have been cleaned up in recent years, which has been better for the community. She noted the property is assessed at \$1800 and a yearly tax bill of \$25.</p> <p>Councilor Woodruff said he was sympathetic to the Davis's in that in some way he thinks this represents the type of situation, which led to the passage of Measure 37. However, it sounds as if this will not be developable because of CWS regulations and approval of the waiver might appear as if the City was just "passing the buck" to another agency. He said Tigard could decide to "take the heat" and become the first jurisdiction to say no to this request. Councilor Woodruff commented on the Measure 37 claims that have come before the Council, which have been approved if it appears to fit the intent of the Measure 37 law. However, he said he did not think it was the City's intention to "roll over" on every application that comes forward if there are other mitigating circumstances and to consider the benefit of the entire community.</p> <p>Councilor Sherwood commented that the reason why the existing condominiums haven't been flooded is because there are wetlands and a buffer there to protect them. She referred to her recent visit to New Orleans where she saw what has happened because all of the wetlands had been dried up and used for development. She came back with a new outlook and appreciation for the function of wetlands. She said she questions whether this case falls under what the intent was for Measure 37 because of the risk to public health and safety to our</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>community.</p> <p>Councilor Buehner said she, as a real estate lawyer, works with a lot of clients who own property who deal with wetland and buffer issues and work with CWS and the state. Whatever the City Council does would be irrelevant because of the standing regulations of other agencies. She expressed her personal dislike of what the applicant was planning to do on the property; however, she is elected to do what is in the best interests of the City. She said she did not think the applicant, in the end, will be able to develop very much. She said she was very hesitant to have the City take on potential liability when all they would be doing is implementing regulations that other jurisdictions have asked the City to implement.</p> <p>Mr. Davis responded to the Mayor's question about whether the applicant would consider continuing the application. He said he would like to continue this process, do more work to determine more answers.</p> <p>Staff recommendation: Planning Manager Bewersdorff said the staff recommendation is that the waiver be granted.</p> <p>Councilor Sherwood commented on testimony (Mr. Tanner) about how this affects people living in the condominiums. These issues cannot be addressed by the City Council. The Measure 37 claim has to do with waiving regulations only – not how it would affect the view from another property.</p> <p>Mayor Dirksen also spoke to Mr. Tanner's concerns. He said the only thing being considered tonight was whether to waive the wetland requirements. If the developer wants to develop additional areas of the property, he would still need to meet all other development codes; i.e., parking, setbacks, etc.</p> <p>Mayor Dirksen noted his interest in what was said by Mr. Wegener with regard to public health and safety and also to the City Attorney's insight on this matter. City Attorney Ramis confirmed that Measure 37 gives specific allowance to waive</p>	

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	<p>regulations that have impact on the value of property. In a situation where a City concludes that it might be facing financial risk for not granting the application, it can then waive.</p> <p>Mayor Dirksen commented that it might seem desirable to take the brave course and deny the claim and risk litigation, and risk other people's money. However, the money that would be at risk would be the money of the citizens of the City of Tigard. Therefore, it behooves the City Council to not necessarily make the most courageous choice, but to make the prudent choice. If he were to vote in favor it would be because he would be comforted in knowing there would be other agencies that would have to consider this claim. He said he did not hear anything tonight that would give the Council the allowance to deny the claim based on Measure 37. But, he did not think this was the type of situation for which Measure 37 was intended. Mayor Dirksen said he thinks even the Measure 37 proponents would agree that there have been unforeseen consequences as a result of the passage of Measure 37. Measure 37 was written, and the spirit of the law, was to deal with issues where zoning and comprehensive planning have changed the allowable uses of properties. Because of the way the measure was written, environmental regulations or changes in codes for regulations on items such as streets and sidewalks, also fall under the Measure's effect.</p> <p>Mayor Dirksen noted that Measure 37 claims made after December 4, 2006, will have different requirements in that there must have been a development application and a code requirement must be cited. The decision on this claim will not set a precedent as claims made after December 4 will be dealt with differently.</p> <p>Councilor Buehner said she was sympathetic to the testimony from the Tualatin Riverkeepers and she believes they are correct. The City of Tigard does not have the authority to waive CWS regulations. Councilor Buehner said this should be sent to Clean Water Services to let them review and she said she</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)										
	<p>was fairly certain that CWS would deny this application.</p> <p>Councilor Woodruff said he hoped the applicants would talk to staff to determine if there was some way for them to get a return on their investment without having to go through this process and create animosity in the community.</p> <p>Mayor Dirksen closed the public hearing.</p> <p>The City Council considered Ordinance No. 07-08:</p> <p>AN ORDINANCE ADOPTING FINDINGS TO GRANT A BALLOT MEASURE 37 WAIVER OF THE TIGARD DEVELOPMENT CODE WETLAND REGULATIONS FOR THE .41 ACRE SITE ON GREENBURG ROAD, SOUTH OF HIGHWAY 217 (WCTM 1S135CA, TAX LOT 02800) SUBJECT TO APPLYING FOR AND RECEIVING SITE DEVELOPMENT REVIEW APPROVAL (M372006-00007)</p>											
8. Measure 37 Claim Hearing (Quasi-Judicial) – Robert E. Ruedy (M372006-00006	<p>Mayor Dirksen opened the public hearing.</p> <p>City Attorney Ramis noted the procedures as reviewed for the previous hearing apply to this hearing. Everyone present in the Council chambers had been present when Mr. Ramis reviewed the procedures for the previous hearing.</p> <p>Associate Planner Pagenstecher presented the staff report. Robert E. Ruedy is seeking compensation and/or waiver of the current land use regulations and Comprehensive Plan policies that are more restrictive than those in place at the time the subject 1.14-acre property was acquired. The property, located south of SW McDonald Street and east of SW 100th Avenue, was acquired by the claimant on December 7, 1992.</p> <p>In response to a question from Mayor Dirksen about restrictions imposed by the Code, Associate Planner Pagenstecher reviewed the key points of the applicant’s request.</p>	<p>Motion by Councilor Buehner, seconded by Councilor Woodruff, to adopt Ordinance No. 07-09.</p> <p>The motion was approved by a unanimous vote of Council present.</p> <table><tr><td>Mayor Dirksen</td><td>Yes</td></tr><tr><td>Councilor Buehner</td><td>Yes</td></tr><tr><td>Councilor Harding</td><td>Yes</td></tr><tr><td>Councilor Sherwood</td><td>Yes</td></tr><tr><td>Councilor Woodruff</td><td>Yes</td></tr></table>	Mayor Dirksen	Yes	Councilor Buehner	Yes	Councilor Harding	Yes	Councilor Sherwood	Yes	Councilor Woodruff	Yes
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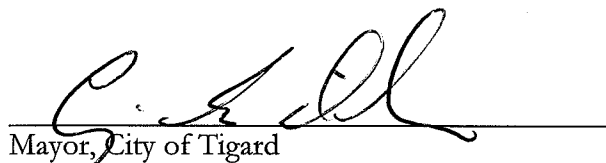
Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>Public Testimony:</p> <p>Applicant Robert Ruedy testified noting that the purpose of filing the claim came about when he tried to find out what had changed in the code since he purchase the property and was not able to get a "concrete definition." He said it looks as if he could place 6 or even 8 units on this 1.4 acre property, but could not build 12 units. In response to a question from Councilor Woodruff about the scope of Mr. Ruedy's claim, Mr. Ruedy explained that he wanted to keep his options open and that he is not sure what he wants to do the property. Council Buehner and Mr. Ruedy discussed how access could be provided.</p> <p>Proponents:</p> <p>Eugene Davis spoke in favor for approval of Mr. Ruedy's request. He noted the voters have said what they wanted to have happen.</p> <p>Opponents:</p> <p>Sue Beilke noted her concerns with this and other applications and referred to the protection of the public's health and safety. Her issues with this proposal included how the units would be accessed, addressing fire codes, and if the property would need to be filled to develop.</p> <p>Mayor Dirksen acknowledged that parking would be an issue for this development. However, if the City was to waive the Code requirements now in place and the requirements in 1992 were applied, the plot plan would have to be reviewed by the Tualatin Valley Fire & Rescue (TVF&R) for safety requirements. City Attorney Ramis confirmed that the City does not have the authority to waive TVF&R regulations. Mayor Dirksen added it was questionable whether the parking requirements would be less restrictive in 1992 than the requirements now in place. City Attorney Ramis confirmed that it is permissible to submit information to the City Council at the public</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>hearing.</p> <p>Rebuttal:</p> <p>Robert Ruedy requested the City Council honor the will of the voters regarding Measure 37.</p> <p>Staff Recommendation: Associate Planner Pagenstecher advised that staff recommends the City Council grant the Ballot Measure 37 waiver.</p> <p>Mayor Dirksen advised he would support the waiver as recommended and said the claimant would still need to meet health and safety requirements.</p> <p>Mayor Dirksen closed the public hearing.</p> <p>Councilor Woodruff noted this represents a different circumstance from the Measure 37 claim heard earlier this evening (E&V Development Company) and noted the regulations were more restrictive in 1992; however, stricter regulations do not necessarily mean there is a reduction in property value. Councilor Sherwood commented she would support the request for a waiver since the 1992 code was stricter.</p> <p>The City Council considered the proposed ordinance:</p> <p>ORDINANCE NO. 07-09</p> <p>AN ORDINANCE ADOPTING FINDINGS TO GRANT A BALLOT MEASURE 37 WAIVER OF THE TIGARD DEVELOPMENT CODE AND COMPREHENSIVE PLAN POLICIES THAT ARE MORE RESTRICTIVE THAN THOSE IN PLACE ON DECEMBER 7, 1992 WHEN THE 1.14 ACRES LOCATED SOUTH OF MCDONALD STREET AND EAST OF SW 100TH AVENUE (WCTM2S111BB, TAX LOT 00500) WAS PURCHASED BY ROBERT E. RUEDY, AND TO ALLOW DEVELOPMENT UNDER THE TIGARD DEVELOPMENT CODE IN PLACE AT THAT TIME, SUBJECT TO APPLYING FOR AND RECEIVING SITE</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
	DEVELOPMENT REVIEW APPROVAL (M372006-00006)	
9. First Quarter City Council Goal Update	Due to the lateness of the hour, City Council decided not to hear the update. City Manager Prosser advised the status of the 2007 Council goals are posted on the City's website.	
Adjournment	The meeting adjourned at 10:14 p.m.	<p>Motion by Councilor Sherwood, seconded by Councilor Woodruff, to adjourn the meeting.</p> <p>The motion was approved by a unanimous vote of Council present.</p> <p>Mayor Dirksen Yes Councilor Buehner Yes Councilor Harding Yes Councilor Sherwood Yes Councilor Woodruff Yes</p>


Catherine Wheatley, City Recorder

Attest:


Mayor, City of Tigard

Date: June 26, 2007